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OFFICE OF PETITIONS

In re Patent No. of Akaike et al. :
Patent No. 7,892,835 :
Issue Date: February 22, 2011 : DECISION ON REQUEST
Application No. 10/593,831 : FOR RECONSIDERATION OF
Filed: September 22, 2006 : PATENT TERM ADJUSTMENT
Attny Docket No. 69719.000003 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)," filed April 22, 2011: Patentees request that the patent term adjustment indicated in the patent be corrected from four hundred eighty-one (481) days to four hundred eighty-five (485) days.

The petition is dismissed.

On February 22, 2011, the above-identified application matured into U.S. Patent No. 7,892,835. The instant request for reconsideration filed April 22, 2011 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 481 days.

Patentees dispute the period of adjustment of 407 days for Office delay in mailing at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application. Patentees contend the period of reduction should be 410 days. In addition, patentees argue that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.702(b), is calculated three years from the application's 371(c) date to the day a Request for Continued Examination (RCE) was filed.

With respect to patentees' request for reconsideration of the 14 month calculation, consideration under 1.705(d) is not appropriate. As stated in MPEP 2730, 1.703(d) provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.


On October 20, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 262 days. This determination was based in part on the period of adjustment of 409 days associated with the Office's mailing of a first Office action on January 5, 2009. PALM records indicate that the issue fee payment was received in the Office on January 13, 2011. No filing of an application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended January 13, 2011. The 14 month issue should have been timely raised on application for patent term adjustment under § 1.705(b). It is not possible to raise the issue for the first time on application for patent term adjustment under 37 CFR 1.705(d).

Patentees are informed that the Three Year Delay period is triggered by the application's commencement date, not the 371(c) date. The commencement date is 30 months from the priority date claimed in the international application, or earlier. The priority date claimed in the international application is March 23, 2004. Thirty months from that date is September 23, 2006. As the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a Saturday, the period expired on the subsequent business day. See PCT Rule 80.5. Accordingly, the commencement date is Monday, September 25, 2006, which is the beginning of the Three Year Delay period. The period is terminated by the

filing of a Request for Continued Examination (RCE). As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on September 26, 2009, the day after three years after the application's commencement date, and ends on May 2, 2010, the day before the RCE was filed, and is 219 days. See 35 U.S.C. 154(b)(1)(B)(i). No change will be made to the B delay period.

In view thereof, the patent term adjustment indicated in the patent remains four hundred eighty-one (481) days, which is 409 days of A delay plus 219 days B delay, minus 147 days of Applicant delay.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.


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